U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-C-S-, INC.

DATE: FEB. 9, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, which describes itself as an information technology business, seeks to permanently employ the Beneficiary in the United States as a Unix administrator. The petitioner requests classification of the Beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

At issue in this case is whether the Beneficiary possesses an advanced degree as required by the terms of the labor certification and the requested preference classification.

I. PROCEDURAL HISTORY

As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL).[1] The priority date of the petition is August 8, 2013.[2]

Part H of the labor certification states that the offered position has the following minimum requirements:

H.4. Education: Bachelor's degree.
H.4-B. Major field of study: Computer Science.
H.5. Training: None required.
H.6. Experience in the job offered: 60 months.
H.7. Alternate field of study: None accepted.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: Accepted. Engineer, or related position.
H.14. Specific skills or other requirements: Any suitable combination of education, training and experience is acceptable.

[1] *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); *see also* 8 C.F.R. § 204.5(a)(2).
[2] The priority date is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d).

Part J of the labor certification states that the Beneficiary possesses a bachelor's degree in computer science from [redacted] in India, completed in 2007. The record contains a copy of the Beneficiary's "Programme Completion Certificate" from [redacted] dated June 25, 2008, indicating that the Beneficiary "completed the Programme Bachelor of Computer Applications (Lateral Entry) after he/she having undergone the Programme during the period from January 2006 to December 2007." The Petitioner submitted the Beneficiary's "Course Completion Certificate" from [redacted] This certificate seems to indicate that the Beneficiary was a full-time student there "during the academic year 1994 1995. He has undergone the three years diploma course and completed the prescribed course of instruction and appeared for the final semester board examinations." Finally, the Petitioner submitted a "Diploma in Computer Technology" issued to the Beneficiary by the [redacted] in April 1997. The Petitioner did not submit transcripts of the Beneficiary's academic records from any of these institutions.

The record also contains an evaluation of the Beneficiary's educational credentials prepared by [redacted] on June 4, 2012. The evaluation states that the Beneficiary's Diploma in Computer Technology is equivalent to an "Associate's Degree in Computer Technology." The evaluation also states that the Beneficiary "was awarded a degree of Bachelor of Science from the [redacted] India in 2007." The evaluation concludes that the combination of these two degrees is "equivalent to a Bachelor of Science Degree in Computer Science from an accredited university in the United States."

The evaluation states that its conclusion is based "on the number of courses and hours of course work" and on "the nature of course work, the grades earned in these courses, hours of academic course work, and admission requirements for the awards." However, the Petitioner did not submit transcripts of the Beneficiary's academic courses, nor does the record contain any evidence of admission requirements for the institutions attended by the Beneficiary. Therefore, it is not clear how the evaluator came to his conclusion regarding the Beneficiary's education level.

On December 3, 2014, the Director issued a request for evidence (RFE). The Director noted that the labor certification required a bachelor's degree and 60 months of experience in the job offered. The Director pointed out that the Beneficiary had completed two separate courses of study and that a foreign equivalent degree must derive from a single source. The Director requested copies of the Beneficiary's official academic record as well as a detailed evaluation of the Beneficiary's credentials. The Director also requested evidence showing that the Beneficiary has at least five years of progressive post-baccalaureate experience in the offered job.

In response to the RFE the Petitioner submitted copies of the documentation that had been submitted with the petition. The Petitioner stated that the Beneficiary qualifies as a professional and requested that the petition be amended to request that the Beneficiary be classified as a professional pursuant to section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii).

Part K of the labor certification states that the Beneficiary possesses the following employment experience:

- Employment as a Senior Associate –IT for Lason [redacted] India, from February 2, 2004, until November 23, 2005;
- Employment as a System Administrator – Project Manager for [redacted] New Jersey, from November 28, 2005, until September 30, 2012; and,
- Employment as a Unix Administrator for the Petitioner since October 1, 2012.

The record contains corroborating experience letters from [redacted]

The Director's decision denying the petition concluded that the Beneficiary did not satisfy the requirements of the labor certification because he did not possess an advanced degree.

The Petitioner's appeal is properly filed and makes a specific allegation of error in law or fact. We conduct appellate review on a *de novo* basis.[3] We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.[4] We may deny a petition that does not comply with the technical requirements of the law even if the Director does not identify all of the grounds for denial in the initial decision.[5]

II. LAW AND ANALYSIS

A. The Roles of the DOL and USCIS in the Immigrant Visa Process

At the outset, it is important to discuss the respective roles of the DOL and U.S. Citizenship and Immigration Services (USCIS) in the employment-based immigrant visa process. As noted above, the labor certification in this matter is certified by the DOL. The DOL's role in this process is set forth at section 212(a)(5)(A)(i) of the Act, which provides:

> Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

[3] *See* 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

[4] The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1).

[5] *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

> (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
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> (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is significant that none of the above inquiries assigned to the DOL, or the regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the alien are qualified for a specific immigrant classification. This fact has not gone unnoticed by federal circuit courts:

> There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).[6] Id. at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.
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> . . .
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> Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on *Madany*, 696 F.2d at 1008, the Ninth Circuit stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C.

[6] Based on revisions to the Act, the current citation is section 212(a)(5)(A).

> § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the DOL that stated the following:

> The labor certification made by the Secretary of Labor . . . pursuant to section 212(a)(14) of the [Act] is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating:

> [T]he Department of Labor (DOL) must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).
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> The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984).

Therefore, it is the DOL's responsibility to determine whether there are qualified U.S. workers available to perform the offered position, and whether the employment of the beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine if the beneficiary qualifies for the offered position, and whether the offered position and the beneficiary are eligible for the requested employment-based immigrant visa classification.

B. Eligibility for the Classification Sought

As noted above, in the instant case, the Petitioner requested classification of the Beneficiary as an advanced degree professional. The Petitioner marked box 1.d of Part 2 of the Form I-140. Although the Petitioner requested to amend the requested classification in response to the Director's RFE and again on appeal, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1988). Therefore, we will consider the instant petition under the requested classification of advanced degree professional.

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1).

The regulation at 8 C.F.R. § 204.5(k)(2) defines the terms "advanced degree" and "profession." An "advanced degree" is defined as:

> [A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

A "profession" is defined as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." The occupations listed at section 101(a)(32) of the Act are "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

> (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
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> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i).

Therefore, an advanced degree professional petition must establish that the beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree. Further, an "advanced degree" is a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, *or* a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty.

When the beneficiary relies on a bachelor's degree (and five years of progressive experience) for qualification as an advanced degree professional, the degree must be a single U.S. bachelor's (or foreign equivalent) degree. The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act, provides that "[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the professions." H.R. Conf. Rep. No. 955, 101st Cong., 2d Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at 6786 (Oct. 26, 1990).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the legacy INS responded to criticism that the regulation required a beneficiary to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990) and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that a beneficiary must have at least a bachelor's degree:

> [T]he Act states that, in order to qualify under the second classification, alien members of the professions must hold "advanced degrees or their equivalent." As the legislative history . . . indicates, the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*

56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (Emphasis added).

In *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006), the court held that, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold at least a baccalaureate degree, USCIS properly concluded that a single foreign degree or its equivalent is required. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."[7] In order to have experience and education

[7] *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) (defining for purposes of H-1B nonimmigrant visa classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar

equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" of a United States baccalaureate degree. *See* 8 C.F.R. § 204.5(k)(2).

The beneficiary's degree must also be from a college or university. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the beneficiary has a United States baccalaureate degree or a foreign equivalent degree." For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." We cannot conclude that the evidence required to demonstrate that a beneficiary is an advanced degree professional is any less than the evidence required to show that the beneficiary is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3d Cir. 1995) *per APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. Sep 15, 2003) (the basic tenet of statutory construction, to give effect to all provisions, is equally applicable to regulatory construction). Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30706 (July 5, 1991).[8]

In addition, a three-year bachelor's degree will generally not be considered to be the "foreign equivalent" of a United States baccalaureate degree. *See Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977).[9] *See Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008) (for professional classification, USCIS regulations require the beneficiary to possess a single four-year U.S. bachelor's degree or foreign equivalent degree); *see also Sunshine Rehab Services, Inc. v. USCIS*, 2010 WL 3325442 (E.D.Mich. August 20, 2010) (the beneficiary's three-year bachelor's degree was not the foreign equivalent of a U.S. bachelor's degree).

In the instant case, the Petitioner relies on the Beneficiary's two-year bachelor's degree combined with his three-year diploma from the [redacted] as being the foreign equivalent of a U.S. bachelor's degree. Where the analysis of the beneficiary's credentials relies on a combination of lesser degrees and/or work experience, the result is the "equivalent" of a bachelor's degree rather than a full U.S. baccalaureate or foreign equivalent degree required for classification as an advanced degree professional.

We have reviewed the Electronic Database for Global Education (EDGE) created by the American

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language.

[8] *Compare* 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, diploma, certificate or similar award from a college, university, school or other institution of learning relating to the area of exceptional ability").

[9] In *Matter of Shah* the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Id.* at 245.

Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." *See* http://www.aacrao.org/About-AACRAO.aspx. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." *See* http://edge.aacrao.org/info.php. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.[10]

In this case, the Beneficiary completed three years of studies at and then entered as a "Lateral Entry." After two years of study at the Beneficiary was awarded a Bachelor of Computer Applications (Lateral Entry) degree. According to EDGE, a Post Secondary Diploma following the Higher Secondary Certificate represents "attainment of a level of education comparable to one year of university study in the United States." EDGE further states that a Bachelor of Computer Applications degree from India is comparable to "two to three years of university study in the United States," and the entrance requirement is completion of "Higher Secondary Certificate or equivalent."

For the reasons set forth above, on December 8, 2015, we issued a notice of intent to dismiss the appeal (NOID). In response, the Petitioner again asserted that the Beneficiary possesses a bachelor's degree. However, the Petitioner did not submit any evidence to support that assertion or to challenge the conclusions of EDGE.

The Petitioner asserts that "[e]ven if USCIS' claim that [the Beneficiary] did not possess a Bachelor's Degree were correct, [the Petitioner] noted on the ETA Form 9089 that a foreign educational equivalent or 'any suitable combination of education, training, or experience' would be acceptable. Therefore, [the Beneficiary] fits the qualifications set forth by the [Petitioner] for this position." However, the Petitioner's indication on the labor certification that "any suitable combination of education, training, or experience" would be acceptable is generic in nature and provides no clarification about what credentials would be considered acceptable in place of the stated educational requirement. In addition, this generic assertion contradicts the Petitioner's

[10] In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that we provided a rational explanation for our reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc. v. USCIS*, 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

indication at Line H.8 of the labor certification that an "alternate combination of education and experience" would not be acceptable.

The Petitioner did not submit any transcripts awarded to the Beneficiary during any of his studies. The Petitioner did not submit the Beneficiary's Higher Secondary Certificate or equivalent to demonstrate that he met the entrance requirement for either his bachelor's degree in Computer Applications or Diploma in Computer Technology. The Petitioner did not submit any evidence to address the deficiencies noted in the evaluation of the Beneficiary's credentials from The Petitioner did not submit any evidence to address the conclusions of EDGE that the Beneficiary's highest level of education, his lateral entry Bachelor of Computer Applications degree from is comparable to two to three years of university study in the United States.

After reviewing all of the evidence in the record, it is concluded that the Petitioner has not established that the Beneficiary possessed at least a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, or a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty as required for classification as a professional and to meet the minimum requirements of the offered position. Therefore, the Beneficiary does not qualify for classification as an advanced degree professional under section 203(b)(2) of the Act.

C. The Educational Requirements of the Offered Position

The petitioner must also establish that the beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg'l Comm'r 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. USCIS interprets the meaning of terms used to describe the requirements of a job in a labor certification by "examin[ing] the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification]" even if the employer may have intended different requirements than those stated on the form. *Id.* at 834 (emphasis added).

In the instant case, the labor certification states that the offered position requires a bachelor's degree in computer science. For the reasons explained above, the Petitioner has not established that the Beneficiary possesses a bachelor's degree or foreign equivalent degree.

In addition, the Petitioner indicated at Line H.7 of the Labor Certification that no alternate field of study is acceptable. On the labor certification, the Beneficiary claims to qualify for the offered position based on a bachelor's degree in computer science from completed in 2007. However, the Beneficiary's certificate from reveals that the Beneficiary completed a program in "Computer Applications," not computer science.

The submitted credentials evaluation incorrectly states that the Beneficiary possessed a "Bachelor of Computer Science" from The evaluation did not offer any explanation for the conclusion that this degree equated to a degree in computer science. Generally, computer science relates to the study of the theory of computation while computer applications relates to the application and practical use of those theories. In the "Author Notes" describing an Indian Master of Computer Applications degree, EDGE distinguishes between the two fields of study by stating such a degree would be "[c]omparable to a degree in computer application, not computer science." A labor certification would need to allow for alternate fields of study beyond computer science if the Beneficiary has a degree in computer applications. The evidence in the record does not establish that the Beneficiary completed a degree in the field of study set forth on the labor certification, computer science, by the priority date. Accordingly, the petition must also be denied for this reason.

D. The Ability to Pay the Proffered Wage

Beyond the decision of the Director, the Petitioner also did not establish its ability to pay the proffered wage as of the priority date and continuing until the Beneficiary obtains lawful permanent residence. *See* 8 C.F.R. § 204.5(g)(2).

The Petitioner stated on the labor certification that it employed 70 workers in the United States. However, its IRS Form 1120S income tax return reveals that it paid just $551,912 in Salaries and wages in 2013. In addition, according to USCIS records, the Petitioner has filed employment-based immigrant petitions for at least 37 other beneficiaries during the past three years. The Petitioner must establish that it has had the continuing ability to pay the combined proffered wages to each Form I-140 beneficiary from the priority date of the instant petition. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg'l Comm'r 1977).

Our December 8, 2015, NOID requested that the Petitioner identify the wage proffered, each beneficiary's priority date, and information about whether any beneficiary has adjusted to lawful permanent residence for each Form I-140 petition that was pending after the August 8, 2013, priority date of the current petition. We also requested that the Petitioner submit any Forms W-2 or 1099 issued to each beneficiary in 2013 and 2014, as well as a copy of the company's annual report, federal tax return, or audited financial statement from 2014. We explained that this information was

necessary in order to document the Petitioner's ability to pay the proffered wage to each beneficiary for whom it has petitioned from the August 8, 2013, priority date of the current petition until the date each petition was denied or withdrawn or each beneficiary of an approved petition adjusted to permanent resident status.

The Petitioner did not address this request when it replied to the NOID and submitted none of the requested documentation. Thus, it is also concluded that the Petitioner has not established its continuing ability to pay the proffered wage to the Beneficiary and the proffered wages to the beneficiaries of its other petitions.

III. CONCLUSION

In summary, the Petitioner did not establish that the Beneficiary possessed an advanced degree as required by the requested preference classification and the terms of the labor certification. Therefore, the Beneficiary does not qualify for classification as a member of the professions holding an advanced degree under section 203(b)(2) of the Act. The Petitioner also did not establish its ability to pay the proffered wage. The Director's decision denying the petition is affirmed.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of A-C-S-, Inc.*, ID# 15212, (AAO Feb. 9, 2016)